



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

thereto as a matter of right, in the absence of rights of defendant which would be prejudiced by a dismissal of the action.

[Ed. Note.—For other cases, see Mandamus, Cent. Dig. § 380; Dec. Dig. § 173.\* 4 Va.-W. Va. Enc. Dig. 716.]

**2. Appeal and Error (§ 1175\*)—Disposition of Case on Appeal—Rendition of Proper Judgment.**—Where the trial court erroneously denied a nonsuit and dismissed the action, the Supreme Court of Appeals on writ of error will reverse the judgment of dismissal, and enter judgment permitting a nonsuit, with costs on the writ of error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4573-4581; Dec. Dig. § 1175.\* 1 Va.-W. Va. Enc. Dig. 628.]

Error to Circuit Court, Loudoun County.

Mandamus by Henry Harrison and others against William H. Clemens, Commissioner of Roads in Leesburg District, in Loudoun County, and another. There was a judgment dismissing the petition, and adjudging that relators pay costs, and they bring error. Reversed.

*J. W. Foster*, for plaintiffs in error.

*E. E. Garrett*, for defendants in error.

---

SCHWAB v. WASHINGTON LUNA PARK CO., Inc.

June 8, 1911.

[71 S. E. 542.]

**1. Master and Servant (§§ 101, 102\*)—Duty of Master—Machinery and Appliances.**—It is the master's duty to use ordinary care to provide reasonably safe machinery for use of his servants, failing to do which he is liable for a resulting injury to a servant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 180-184; Dec. Dig. §§ 101, 102.\* 9 Va.-W. Va. Enc. Dig. 674.]

**2. Master and Servant (§ 234\*)—Injury to Servant—Defective Appliances—Promise to Remedy.**—Where a servant notifies the master of a defect in an appliance, and the master promises to remedy it, and the servant, relying on the promise, continues to use the appliance, and is shortly thereafter injured, the master is liable, unless the danger is so manifest that no reasonably prudent person would incur the risk.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 684-686; Dec. Dig. § 234.\* 9 Va.-W. Va. Enc. Dig. 680.]

**3. Master and Servant (§ 289\*)—Injury to Servant—Defective Appliances — Contributory Negligence.**—While a so-called "Ariel

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

swing," operated by electricity, was being run at night, the trolleys, by which it was lighted, and which were worn and likely to come off, came off; and, a passenger being frightened and threatening to jump, the operator, in accordance with instructions, as there was evidence, for such circumstances, not only turned off the power, but, before the machinery stopped, attempted to rearrange the trolleys, necessitating his working over uncovered cogwheels, in doing which he slipped, and was caught therein. Held, that whether he was guilty of contributory negligence, in having continued to use the defective trolleys, relying on the master's promise to substitute new trolleys, which had been gotten a week before, was a question for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1089-1132; Dec. Dig. § 289.\* 9 Va.-W. Va. Enc. Dig. 703, 726.]

Error to Circuit Court, Alexandria County.

Action by Frederick Schwab against the Washington Luna Park Company, Incorporated. Judgment for defendant. Plaintiff brings error. Reversed and rendered.

*J. K. M. Norton*, for plaintiff in error.

*Moore, Barbour & Keith*, for defendant in error.

---

EDMUNDS *v.* BARROW.

June 8, 1911.

[71 S. E. 544.]

**1. Deeds (§ 112\*)—Description by Reference—Sufficiency.**—A report of a survey and a plat, referred to in a partition deed to fix the metes and bounds of land conveyed, are as much a part of the deed as if copied therein.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 323, 324; Dec. Dig. § 112.\* 4 Va.-W. Va. Enc. Dig. 399.]

**2. Evidence (§ 460\*)—Extraneous Evidence—Admissibility.**—Extraneous evidence is admissible to remove doubt as to the correct location of a survey, or as to the application of a grant to its proper subject-matter.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2120; Dec. Dig. § 460.\* 2 Va.-W. Va. Enc. Dig. 603, 608.]

**3. Evidence (§ 230\*)—Admission by Former Owner of Land—Admissibility.**—In ejectment, involving the true location of a boundary line, defendant was properly permitted to show that one of plain-

---

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.